

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 629 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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MADHUBHAI NANJIBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR PM VYAS for Petitioner  
MR Y.F. MEHTA for Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE H.L.GOKHALE

Date of decision: 08/01/97

ORAL JUDGEMENT: (Per Pandya, J.)

1. The accused-appellant along with two others was facing trial in Sessions Case No.23 of 1987 for offence punishable under Section 302 read with Section 34 as also Section 326 read with Section 34, all of I.P.C. There is also a charge under Section 323 read with Section 34,

I.P.C.

2. The case against the accused before the Trial Court was that on 19.9.1986, at about 7.30 P.M., at village Tarwada in Mafatia plot area, bearing a common intention to kill Keshu Hemraj, accused No.1 assaulted with a Dharia and the remaining two accused assisted and actively associated, apparently verbally, with accused No.1 in killing him. The charge under Section 326 relates to causing injury to one Shambhu Hemraj again by accused No.1 with a Dharia as also by accused No.2 by an axe. Charge under Section 324 relates to the injury to Shambhu Hemraj by a sphere said to have been inflicted by accused No.3, being a juvenile, was not tried by the Sessions Court.

3. At the end of the trial, by judgment dated 8th June, 1988, the learned Sessions Judge of Amreli was pleased to hold accused No.1 only to be guilty for offence punishable under Section 302 as well as for 326. The accused-appellant was awarded life imprisonment for offence under Section 302 and rigorous imprisonment for five years and fine of Rs.500/-, and in default, to undergo R.I. for three months for the offence under Section 326, I.P.C.

4. In view of the fact that an injured, who suffered grievous hurt, has survived to give his story, obviously, he is an eye witness and likewise, widow of the deceased is also an eye witness, who has been examined as P.W.2 before the Trial Court at Ex.20, page 64 of the paper book. Her name is Savitaben.

5. Her cross-examination reveals that Shambhu, the injured eye-witness was suffering from night blindness and, therefore, to the extent that handicap would prevent him from actually seeing the incident, the defence has certainly tried to come out of the impact of the testimony of Shambhubhai. However, Savitaben has stood the test and after narrating the incident in the examination in chief, when question were put to her in cross-examination, she maintained that the deceased was sitting with the accused party and was taking tea with them at their invitation, and on hearing the shout of verbal quarrel, she came on the scene and, in fact, persuaded her husband to leave scene, so that the situation would not worsen. This has been cross-examined in page 69-70. Admitting this position, she further says that from the backside, the present accused-appellant gave a Dharia blow. This version is clearly confirmed by medical evidence in the form of P.M. note Ex.47, page

161 of the paper book. The external injury on the head at page 154 clearly states that there is an incised wound horizontal in direction in the occipital region of the size 7" x 1" x cavity deep, meninges and brain cut.

6. If this was the only injury, probably on the alternative plea made on behalf of the accused-appellant by Shri Vyas, the appeal could have been considered successful. The alternative plea was that it was an unintentional act on the part of the accused-appellant and though they were sitting and taking tea together, suddenly the quarrel took place and that has resulted in the incident. In our opinion, according to the testimony of Savitaben read with the cross-examination along with the medical evidence, there is a second injury again by Dharia starting from left ear lobule deep down reaching upto the neck and in the process cut both larynx-oesophagus. This clearly can be said to be an act of a person who intended to achieve a particular result. It, therefore, cannot be said to be an unintentional act.

7. In our opinion, there is no substance in the appeal and, hence, it is dismissed. The order of the Trial Court is confirmed.

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